

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications )  
and Energy on its own Motion to Implement the )  
Requirements of the Federal Communications ) D.T.E. 03-60  
Commission's Triennial Review Order Regarding )  
Switching for Mass Market Customers )

**MCI's REQUEST TO PARTICIPATE AND COMMENTS ON THE  
SCOPE, NATURE AND TIMING OF THE DEPARTMENT'S  
TRIENNIAL REVIEW PROCEEDINGS**

Pursuant to the Department's *Vote and Order To Open Proceeding*, dated August 26, 2003 ("Order"), WorldCom, Inc. ("MCI") submits the following request to participate in this proceeding along with its comments on the scope, nature and timing of the Department's inquiry in this proceeding.

1. Request to Participate

MCI respectfully requests that it be permitted to participate in this proceeding as an active party. MCI is one of the first CLECs in Massachusetts to offer local service to the residential market in Massachusetts and now offers local service throughout the service territory of Verizon Massachusetts ("Verizon".) MCI has a vital interest in the outcome of the Department's inquiry because it offers local service in Massachusetts by purchasing the "UNE-Platform" combination of unbundled network elements from Verizon. Thus, MCI has a direct and substantial interest in demonstrating to the Department that MCI and other carriers will be impaired without access to unbundled switching for mass market customers, given the substantial economic and operational impediments facing competitors in offering local service through their own or non-Verizon switches. MCI also has an interest in purchasing high-capacity loops and dedicated transport from Verizon, and thus, has a direct and substantial

interest in demonstrating to the Department that MCI and other carriers will be impaired without access to these unbundled elements. MCI expects to be a full participant in this proceeding, and plans to conduct discovery, present witnesses and file written briefs on the many issues.

## 2. Nature of Proceeding

The Department has solicited comments on the question of whether this proceeding should be conducted as an “adjudicatory proceeding” as defined in G.L. Ch. 30A, section 1(1), or whether some other type of proceeding is warranted, such as the Section 271 Evaluation, D.T.E. 99-271. Order, p. 3. MCI respectfully submits that this proceeding should, and must, be conducted as a traditional adjudicatory proceeding under Chapter 30A of the General Laws. In the Triennial Review Order (“TRO”)<sup>1</sup>, the Federal Communications Commission (“FCC”) has delegated to the state commissions the responsibility of making factual determinations on whether certain unbundled network elements must continue to be offered by Verizon and other incumbent LECs. The TRO requires the state commissions to make a number of findings, conclusions and determinations on a variety of issues, including market definition, satisfaction of self-provisioning and wholesale triggers, potential for self-provisioning, adoption of batch cut processes, etc. These findings can only be made on the basis of record evidence, after full opportunity for discovery, hearings and written briefs, with the right to seek appropriate reconsideration by the Department or review by the courts following the conclusion of the proceeding.

MCI respectfully submits that this proceeding should be conducted as an adjudicatory proceeding under state law. It should be noted that the Department’s role in the Section 271

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<sup>1</sup> *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, rel. Aug. 21, 2003 (“TRO”).

Evaluation was significantly different than the role contemplated by the TRO. In the long distance approval process, the 1996 Act required the FCC to consult with the states on whether the Bell Operating Company had satisfied the 14-point competitive checklist. The ultimate arbiter of checklist compliance, however, was the FCC, which afforded all interested parties the opportunity to present evidence of non-compliance with checklist items. Under the TRO, the states are expected to perform the final decision-making tasks in determining whether certain UNEs should or should not be unbundled. Accordingly, the Department's role is not merely a consulting role as in the 271 process, but a full fledged fact finder.

### 3. Scope of Proceedings

The FCC has required the Department to conduct a highly complex inquiry over a relatively short period of time. The task before the Department in this proceeding is to determine whether there are situations in which Verizon can overcome the national finding of impairment with respect to mass market switching and DS-1, DS-3, and dark fiber loops and transport. MCI believes that the evidence will show convincingly that Verizon cannot overcome the national finding of impairment for mass market switching in any Massachusetts market.

At the same time, nevertheless, MCI is committed to bringing facilities-based mass market competition to the Massachusetts residential and small business markets, where and when use of MCI's switching and other facilities makes economic and operational sense. As the record in this case will demonstrate, there are many substantial economic and operational impediments that create barriers to entry and that need to be addressed before such competition can develop.

Accordingly, the findings that the Department will make at the conclusion of this proceeding should not be seen as the end of the process but as one more step towards the

goal. After the Department reaches its conclusions in this proceeding, the Department should open new proceedings (or extend this proceeding) to permit the industry to work in collaborative sessions to address and resolve the economic and operational impairments that are preventing the development of broad-scale facilities-based competition in the local markets. Further adjudicated cases may be necessary to resolve issues that cannot be resolved through collaborative processes.

#### 4. Number and Nature of Proceedings

MCI proposes that the Department actions required by the FCC in the TRO be accomplished through two evidentiary proceedings – one proceeding on mass market switching impairment and one proceeding on high-capacity loop and transport impairment. Accordingly, MCI proposes that this proceeding be bifurcated to facilitate administration of the docket and to appropriately focus the many issues. Both proceedings will require intense examination of economic and operational impairments.

##### a. Loop/Transport Impairment

The high-capacity loop and transport impairment proceeding will be a data intensive process. While the issues examined therein will be complex, they will be more limited in nature and scope than the issues to be examined in the mass market switching proceeding, in large part because we anticipate that relatively few loop/transport routes and locations will be in issue. MCI expects that the loop and transport impairment case will therefore be more focused than the mass market switching proceeding.

##### b. Mass Market Switching Impairment/Batch Cut Process

The national finding “that competing carriers are impaired without access to unbundled

local circuit switching for mass market customers” is based on “the combined effect of all aspects of the hot cut process on competitors’ ability to serve mass market voice customers.”<sup>2</sup> The FCC found that “the overall impact of the current hot cut process raises competitors’ costs, lowers their quality of service, and delays the provisioning of service, thereby preventing them from serving the mass market in the large majority of locations.”<sup>3</sup> Therefore, one important aspect of the mass market switching impairment proceeding will be an examination of whether Verizon can overcome the finding that competitors are impaired based on its hot cut process. In addition, the mass market switching impairment proceeding will examine many other economic and operational issues “that may give rise to impairment.”<sup>4</sup> The FCC has identified several categories of barriers that could create impairments, including:

poor incumbent LEC performance in fulfilling unbundling, collocations, and other statutory obligations, difficulties in performing customer migrations between competitive LECs, difficulties in performing collocation cross-connects between competing carriers, and the significant cost disadvantages competitive carriers face in obtaining access to the loop and backhauling the circuit to their own switches.<sup>5</sup>

These barriers “can be sufficient to hinder or prevent entry even if impairment caused by hot cuts were fully resolved.”<sup>6</sup> Therefore, a detailed and granular analysis of all economic and operational impairments will have to be applied “to each identifiable market” in the mass market switching impairment proceeding.<sup>7</sup>

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<sup>2</sup> TRO at ¶473.

<sup>3</sup> *Id.* at ¶473.

<sup>4</sup> *Id.* at ¶476 (citation omitted).

<sup>5</sup> *Id.* (citation omitted).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶495.

The FCC has set forth certain parameters as to how the states must determine the proper market definition and has mandated that the states conduct a thorough factual examination before arriving at a definition. The FCC has directed that “[s]tate commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors’ ability to serve each group of customers, and competitors’ ability to target and serve specific markets economically and efficiently using currently available technologies.”<sup>8</sup> Given the extensive factual record that the FCC has required the states to analyze before defining the market, the Department’s determination as to the definition of a market can and should only be made after it has received and reviewed all evidence and argument in this proceeding. There are no other reasonable alternatives given the likely case schedule and given the totality of the information which the FC has mandated that the Department must consider before making its determination as to the definition of the relevant market.

Finally, this proceeding must address implementation of the batch cut process mandated by the TRO. The FCC has required the state commissions to establish a batch cut process for migrating two or more unbundled loops to a CLEC switch, or explain why such a process is unnecessary.<sup>9</sup> In addition to determining the specific processes that Verizon must use in performing a batch cut, the TRO requires the Department to establish TELRIC-compliant rates for the batch cut procedures established by the Department.<sup>10</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at ¶488.

<sup>10</sup> *Id.* at ¶489.

c. Burdens of Proof and Going Forward

The FCC has found that competitors are impaired without access to unbundled mass market local switching and high-capacity loops and transport and left it to the state commissions to determine on a more granular basis if there are situations in which competitors are *not* impaired. The FCC accordingly required the states to make findings of non-impairment where appropriate and under certain circumstances. Given the FCC's findings, it should be Verizon – as the proponent of a finding of non-impairment – who should have the burden of going forward, and as the party with the ultimate burden of proof of overcoming the national findings of impairment on these issues.

5. Timing of Proceedings

The FCC has called for the state commissions to make judgments that depend upon a substantial amount of highly granular empirical data. The key to the success of the proceedings, therefore, is to have this data available to all parties and to the Department in a timely manner. Consistent with the fact that the judgments the Department is called upon to make rely so heavily on factual data to be collected and reviewed, it is critical that discovery consistent with the Department's rules commence as soon as practicable, and that the parties have substantial time to review the information and make use of it in their respective cost-studies and analyses.

Respectfully submitted,

WORLDCOM, INC.

By:\_\_\_\_\_

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